A - 1414 24. 7. 47

H.P. 23.7.47

R. Dis. File No. 621

1939.

Collection No.

Resident's Office

Bangalore

Pros. Serial Nos. 1 - 3 P-15/K

Subject.

Order, Sanctioning appeal against Acquittal. (Municipal Comm^r. Vs. Abdul Rahman).

Previous References.

Later References.

S. 97.—(Blue)

MFP—1187 S&P—(M-2104)—21-3-39—70,000.

1

The acquittal of the accused proceeded on two grounds referred to by District Magistrate in the letter recommending that an appeal against acquittal may be filed.

2.

(H)

It appears to be clear that in the absence of delegation under section 16 of the Law, the Food Inspector had no authority to separate the sample into three parts, deliver one of the parts to the dealer and send another part for analysis to the public analyst. The article for analysis had not been sent according to law, and even if he discovers it to be adulterated, no prosecution can lie on the result of such analysis. The learned Public Prosecutor argues "but that would not make the article which is subjected to analysis genuine". It is too absurd to be any-body's case. If an unauthorised Food Inspector could send articles for analysis and prosecutions could be launched on the result of such analysis, the Octroi Superintendent or the Water Works Engineer, because they happen to be Municipal employees, can just as well enter shops/and take samples send them for analysis. It may be argued that since there was proper delegation under section 15, under clause (1)(b), the Food Inspector could send samples for analysis. But it may be seen that section 15 is governed and regulated by section 16. Section 16 lays down how the general authority conferred by section 15 is to be worked; in other words the provisions of section 15 have no independent existence. The case, however, is interesting and arguable, and a ruling from the highest Court would settle the point. It may be mentioned that there has since been a delegation of authority under section 16.

Con. p. 4 end. to P.U.C

I do not agree with J.C

I do not agree with J.C.

3.

It appears public interests are clearly involved, and the Public Prosecutor may be directed to file an appeal.

Draft submitted (with [illegible])

A.S.Rao
2.XI.39

Secretary.

S. 3. F 637/38, (R) Limited. Rule 3.

(1). the Food Inspector's action under Sec 15, in taking a sample of food & sending it to the analyst was perfectly regular, as under the Rules PHC could delegate his powers to him.

S2 F545/39. Limited.

(2). By error which has since been rectified, a similar delegation under Sec. 16 was not made. This Section however merely provides the procedure under which action under Sec 15 is taken, and for the issue of notice to the individual concerned.

(3). The sample was taken & sent to the public analyst by a properly authorized person & the irregularity in procedure under Sec 16 should not vitiate this action.

(4). In any case, provided there is reliable evidence that a sample was being sold by an individual, & that the sample was adulterated, the offence must be held to be made out, even if the prescribed procedure for taking the Sample was not correctly carried out. That procedure is only to make sure that the evidence is always reliable

(5). Re the foreign fat. There is no evidence or reason for

Holding that the public 3 analyst's certificate is incorrect.

(b). Since there are 60 cases waiting, which depend on the delegation of powers question, a public interest involved.

We may appeal

(Please put all appeals against acquittals up to me in the first instance before noting.)

3/11/39.

193/XI

Resident.

Records forwarded with S.N. 1 may now be returned to the District Magistrate. Draft submitted.

7.XI.39

7.11.39

Sub/Dt.

Record.

VERY URGENT.

No3840-C-39 Enc.34

S. No. 1.

1

Office of the District Magistrate,
Civil and Military Station, Bangalore.

Dated 31st October 1939.

Rec'd 5.25 pm
1/11/39

FROM H.H. Carleston, Esq., I.C.S.,

DISTRICT MAGISTRATE, CIVIL AND MILITARY STATION,

BANGALORE.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
-2 NOV. 1939
Diary No. 11,090
File No.

Rdo 621/39

To

The Secretary to the Hon'ble the Resident in Mysore,

Bangalore.

C.C.No.628/39 on the file of the Munsiff Magistrate - Municipal Commission Vs.Abdul Rahimon - acquittal of the accused - appeal against - sanction- requested.

- - -

I have the honour to forward herewith the entire records in C.C.No.628/39 on the file of the Munsiff Magistrate and to state that the accused was acquitted by the Munsiff Magistrate mainly on the following grounds:-

(V)

Rtd to D.7 - vide S.N 3 infra

(H)

1. that the service of notice on the accused under section 16 of the Bangalore Prevention of Adulteration Law is illegal,

and 2. that from the values recorded in Exhibit 'A' it is doubtful to take the sample was really adulterated with foreign fat.

The Munsiff Magistrate was asked to explain matters. His reply is enclosed. The order of the Additional Judge in Criminal Revision Petition No.5/34 dated the 25th July 1934 Papiah and Joseph Vs. King Emperor quoted by the Magistrate does not seem to have any bearing on the question at issue. It refers to the actual filing of the complaint and whether the person who filed it was authorised to do so. There is no question here that the Health Officer was authorised to complain. The only question is whether some incidental procedure prior to the filing of the complaint can affect the validity of the trial. This is surely for the accused to show if he asserts it.

(M)

No

12

No objection on this ground was allowed previously, not put up until the recent amendment was made to the rules so as to permit delegation of powers under Section 16. Section 16 deals with routine matters and it was probably at first thought unnecessary to make any formal delegation under that Section. It was subsequently done, however, to avoid objections on this score (even though they had always been over-ruled). However, I do not think the lack of formal delegation of powers under this Section should affect the validity of the whole proceedings unless accused can show it has occasioned a failure of justice.

Regarding the second ground on which the Magistrate has acquitted the accused, there is nothing in the evidence or on record to support the Magistrate's finding or to justify rejection of the Public Analyst's certificate. The Magistrate has not given any reasons ~~even~~ for agreeing with the accused's counsel in preference to the Public Analyst.

I think this is a fit case for an appeal by Government against acquittal. The acquittal of the accused is in my view erroneous and if allowed to stand, will defeat the ends of Justice in about 60 cases now pending before the Munsiff Magistrate and the Chairman, Bench of Magistrates.

In these circumstances, I request that the Hon'ble the Resident may be pleased to file an appeal against the acquittal of Abdul Rahimon at the forthcoming session of the High Court so that a decision may be obtained urgently. I enclose a note from the Public Prosecutor and a draft Memo of appeal.

6th November 1939.

I have the honour to be,
Sir,
Your most obedient servant,

H.H. Carbutt

DISTRICT MAGISTRATE.

1 NOV. 1939

MAB.31/10.

1.11.39

Letter No.M.918-1939, dated the 25th October 1939, from the District Munsiff and First Class Magistrate, Civil and Military Station, Bangalore, to the District Magistrate, C & M Station, Bangalore.

-----:O:-----

Food Adulteration cases - C.C.No.628 of 1939 on the file of this Court - accused Abdul Rahiman - acquittal of - Your letter No.3840-C-39, dated the 23rd October 1939.

- - -

It was argued before me that the local Government itself had not empowered the President, Municipal Commission, to delegate his powers under section 16 of the B.P.A.Law to any subordinate of his and that the President had also not delegated those powers of his to the Food Inspector. The service of notice by the Food Inspector and the separation of the sample into three parts and their marking and sealing on his own authority is thus unauthorised and illegal.

2. In a case where the Municipal Commission, which had been empowered to delegate its authority under the Bangalore Municipal Law to an Officer by name, had by a resolution authorised the Health Officer to exercise that authority in general terms and not personally by name, the Additional Judge of the Hon'ble the Resident's Court held that even this formal irregularity rendered the proceedings bad ab initio. (Please see the decision in Cr.R.P.No.5/34 dated 25-7-1934, Papiah and Joseph Vs. King Emperor, in Municipal Charge sheet No.155/1933 dated 11-1-33). I was not referred to any authority to the contrary to show that non-delegation of a certain power under the statute, or omission to so delegate it to the person who exercised it, is a curable irregularity which does not render this act invalid in law.

"C O P Y"

M. Kuttappa

SHERISTADAR.

7.11.39

I have gone through the judgment of the learned Munsiff Magistrate and have also come to the conclusion that the grounds on which he has acquitted the accused are not tenable.

It may be that in a given case the sample is not taken by the President as contemplated by Sec.16 of the Bangalore Food Adulteration Law or is taken by an official of the Health Department to whom the powers under Sec.16 have not been delegated. But that would not make the article which is subjected to analysis genuine nor would it vitiate the initiation of proceedings. The case relied upon by the learned Munsiff Magistrate, is, as observed by the learned ~~Munsiff~~ District Magistrate, not at all in point, As has been observed by the Additional Judge of the Resident's Court in that case the defect went to the root of the proceedings, viz., the initiation of the proceedings. The learned Additional Judge observed that in the absence of a complaint signed by an official authorised under Sec.176 of the Municipal law "there was no complaint at all and the trial was ab initio void". In this case the defect if any in sampling and analysis did not affect the proceedings before the Court at any stage whatsoever. It seems to me to be incorrect to apply to this case the principle enunciated by the learned Additional Judge of the Resident's Court.

On the contrary, the more appropriate principle would be that enunciated by Justice Chandavarkar in the case in which Mr.V.D.Savarkar was prosecutoed for sedition. I am not just now able to lay my hands on the volume of the Bombay Reports in which the case has been reported. But I am definite that in that case it appeared that Mr.Savarkar was arrested by British Indian Police authorities in territory beyond the limits of the territories to which either the Indian Penal Code or the Criminal Procedure Code could apply. Based on this it was argued that Mr.Savarkar's arrest itself being

illegal, his production before Court and the proceedings taken against him were all illegal. His Lordship Justice Chandaverker held that once the accused was before the Court the irregularities in the manner in which he was brought before the Court would not affect the jurisdiction of the Court to try.

The absence of a complaint properly laid before the Court is a matter which affects the jurisdiction of the Court. I do not find any authority for the proposition that the irregularities in the sampling and analysis in any manner affect the jurisdiction of the Court. The delegation of the authority seem to be material only in regard to the capacity of the Food Inspector. If power is delegated, he becomes a public sergant as defined in S.21 Indian Penal Code. Otherwise he is not (vide S.3(2) of the B.F.A.L.).

It therefore follows that on the point the judgment of the learned Munsiff Magistrate does not appear to be correct and a ruling on this point should be obtained by an appeal to the highest Court.

The learned Munsiff Magistrate also observes in his judgment that "from the values recorded in Ex.A it is doubtful whether the sample was really adulterated with foreign fat". This finding has reference apparently to the contention put forward on behalf of the accused that the certificate of the analyst does not show the nature or the percentage of foreign fat. This contention was advanced in Gurubasappa's case also. The Bangalore Food Adulteration Law does not require that the analyst must record the percentage of the nature of the foreign fat discovered by him in the course of the analysis and in connection with Gurubasappa's case I remember having been told by the analyist that the Municipal Laboratory is not equipped with apparatus which would enable the analyst to discover exactly the nature and percentage of the adulterant, inasmuch as the law itself does not make it obligatory that the analyst must find out the nature and extent of the

adulterant. I have been of opinion that the contention advanced on behalf of the accused should not be accepted. This also seem to be a point on which the ruling of the High Court may be obtained. The contention itself is based on certain passages in Halsbury's Laws of England (Relevant Volume). But those passages are verbatium reproduction of the provisions of the English statutes on the subject. They are not principles of either common law or principles enunciated by Judges. The principles of English statutes have made it obligatory perhaps because the laboratories in England have the necessary equipment for determining the nature and extent of the adulterant.

Anyhow it seems to me a ruling of the High Court may be obtained on this point also.

Draft memo of appeal is enclosed for approval.

Sd. B.Shanker Rao.

Public Prosecutor.

"C O P Y"

M. Seetharamaiah

SHERISTADAR.

1.11.89

IN THE COURT OF THE HON'BLE THE BRITISH RESIDENT
IN MYSORE, BANGALORE.

Criminal Appeal No. of 1939.

From the order of acquittal passed by the learned Munsiff Magistrate, Bangalore in Criminal Case No.628 of 1939 on his file.

Appellant:- (Complainant)

The Crown
by Public Prosecutor,
C & M Station, Bangalore.

Respondent:- (Accused).

C.M.Abdul Rahiman,
145 Ibrahim Saheb Street,
C & M Station, Bangalore.

UNDER SECTIONS 417 and 419 of the Code of Criminal Procedure, the Public Prosecutor of Bangalore, under the orders of the local Government filed herewith begs to prefer this appeal to this Hon'ble Court from the order of acquittal of the learned Munsiff Magistrate in C.C.No.628/39 on his file for the following amongst other grounds:-

1. The learned Munsiff Magistrate erred in holding that as there was no delegation of power to the Food Inspector by the President under Section 16 of the Food Adulteration Law, the irregularities if any subsequent to the obtaining of the sample affected the merits of the case or the trial of the case or in any manner rendered the proceedings initiated against the accused illegal and such as to lead to an acquittal of the accused.

2. The learned Munsiff Magistrate erred in holding that because the Public Analyst had not recorded the nature and extent of the adulterant the guilt of the accused was doubtful or that it was doubtful that the article analysed was adulterated.

3. The facts of the case clearly establish the guilt of the accused.

4. The judgment of the learned Munsiff Magistrate is against law and facts and is not supported by the records of the case.

The appellant therefore prays that the order of acquittal may be set aside and the case disposed of according to Law.

"Copy"

M. Seethapathy
Shirastadar
1.11.39.

S.N.2.

19

PROCEEDINGS OF THE HON'BLE THE RESIDENT
IN MYSORE.

---:0:---

Issue today
Issued 3/x/1
3/11/39

R.Dis.No.F. 621 -39 Judl. Dated Bangalore, 3rd Novr.1939.

Read:-

Letter No.3840-C-39, dated the 31st October 1939, from the District Magistrate, Civil and Military Station, Bangalore.

O R D E R.

Under section 417 of the Code of Criminal Procedure, 1898 (V of 1898), as applied to the Civil and Military Station of Bangalore, the Hon'ble the Resident is pleased to direct the Public Prosecutor of the Station to present an appeal to the Court of the Hon'ble the Resident in Mysore against the order of acquittal passed by the District Munsiff and First Class Magistrate, Civil and Military Station, Bangalore, in C.C.No.628 of 1939 on his file.

King Emperor vs. Abdul Rahiman.

o/c

SECRETARY TO THE RESIDENT.

To

The Public Prosecutor, Civil and Military Station, Bangalore.

Copy to -

The District Magistrate, C & M Station, Bangalore

2.x1.39

S.N.

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE,

Bangalore, the 9th November *1939.*

Received Issue 9/11/39 8/x1

R. Dis. No. F. 621–39 Judl. Enc. Records

[A copy of the] The undermentioned paper(s) is forwarded] records are returned to the

District Magistrate, Cantt. station, Bangalore,

~~for information,~~ in continuation of ~~with reference to~~ ~~the correspondence ending with (his)~~

~~Memorandum~~ / ~~letter~~ / endorsement from this Residency forwarding Proceedings of the Hon'ble the Resident

R. Dis No. F. 621-39, dated the 3rd November 1939.
Judl.

S.N. 2
Corr. ?

By order, etc.,

for ~~Asst. Secy.~~ Secretary to the Resident in Mysore.

7.11.39

List of papers.

(V) C. C. No 628 of 1939 on the file of the Munsiff Magistrate, Cantt. station. Bangalore.

A.S.Rao
7.xi.39